

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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CYNTHIA VILLAGOMES,

Plaintiff,

vs.

LABORATORY CORPORATION OF  
AMERICA, a Delaware corporation;  
LABORATORY CORPORATION OF  
AMERICA HOLDINGS, a Delaware  
corporation; ON DEMAND, INC. d/b/a  
ACCURATE COURIER & LOGISTICS, a  
Nevada corporation; LAS VEGAS  
SURGICARE, INC. d/b/a LAS VEGAS  
SURGERY CENTER, a Nevada corporation;  
ROE CORPORATIONS 1–50, inclusive, and  
DOES 1–50, inclusive,

Defendants.

Case No.: 2:08-cv-00387-RLH-GWF

**ORDER**

(Motion to Remand for Lack of Subject  
Matter Jurisdiction—#76; Countermotion  
to Dismiss—#88; Countermotion to  
Dismiss—#89; Countermotion to  
Dismiss—#90)

Before the Court is Plaintiff Cynthia Villagomes’ **Motion to Remand for Lack of Subject Matter Jurisdiction** (#76), filed June 2, 2010. The Court has also considered Defendant Accurate Courier & Logistics’ (“Accurate”) Opposition and Countermotion to Dismiss (#88), filed June 23, 2010, Defendant Laboratory Corporation of America’s (“LabCorp”) Joinder to Opposition and Countermotion to Dismiss (#89), filed June 23, 2010, Defendant Las Vegas

1 Surgicare d/b/a Las Vegas Surgery Center's ("Surgery Center") Countermotion to Dismiss (#90),  
2 filed June 23, 2010, and Supplement to Joinder to Opposition (#92), filed June 30, 2010,  
3 Villagomes' Reply (#93), filed July 9, 2010, and LabCorp's Reply (#97), filed July 20, 2010.

#### 4 **BACKGROUND**

5 This cause of action arose out of the loss of Villagomes' surgically excised tumor.  
6 On March 3, 2008, Villagomes filed suit in Nevada state court against LabCorp alleging claims for  
7 (1) negligence; (2) negligent infliction of emotional distress; (3) intentional infliction of emotional  
8 distress; and (4) trespass to chattel. On March 26, LabCorp removed the case to this Court based  
9 on the diversity of the parties. On May 21, Villagomes amended her Complaint to include a  
10 demand for a jury trial. On June 19, 2009, Villagomes filed an Emergency Motion to Extend Date  
11 to Add New Parties and for Addition of Certain Parties. In this Motion, Villagomes stated that she  
12 learned at the deposition of a LabCorp employee on May 18, 2009, that a representative from  
13 Accurate, acting on behalf of LabCorp, had actually signed for the tumor on the day of her surgery.  
14 Villagomes further stated that prior to this deposition, she had been under the impression that the  
15 person who picked up the tumor was a representative of LabCorp. The Court granted Villagomes'  
16 request to add new parties on July 16. On July 21, Villagomes filed a Second Amended  
17 Complaint in which she named Accurate and Surgery Center, Nevada corporations, as defendants.

18 On June 2, 2010, nearly a year after amending to add these Nevada corporations,  
19 and after much further litigation and discovery in this Court, Villagomes filed this motion to  
20 remand for lack of complete diversity. In response, LabCorp, Accurate, and Surgery Center filed  
21 counter motions to dismiss. For the reasons discussed below, the Court denies these motions.

#### 22 **DISCUSSION**

##### 23 **I. Villagomes' Motion to Remand**

24 Villagomes was aware, or should have been aware, that joinder of Surgery Center  
25 and Accurate would destroy diversity at the time requested leave to amend and when she amended  
26 her complaint to add them more than one year ago. Plaintiffs cannot add parties solely for the

1 purpose of destroying diversity. The Court finds that Villagomes delayed far too long in moving  
2 to remand this case to state court and therefore the motion is untimely. Remand would unfairly  
3 prejudice all of the defendants involved and would be a waste of judicial resources as this Court  
4 has already spent a significant amount of time with this case. Therefore, the Court denies  
5 Villagomes' motion to remand.

6 **II. LabCorp, Accurate, and Surgery Center's Countermotions to Dismiss**

7 Defendants bring motions to dismiss but actually request that the Court readdress  
8 its order allowing Villagomes to amend her complaint and add additional parties. In the  
9 alternative, Defendants request that the Court sever the recently added parties. Defendants have  
10 not presented sufficient reason for the Court to take either of these actions. Therefore, the Court  
11 denies Defendants' motions.

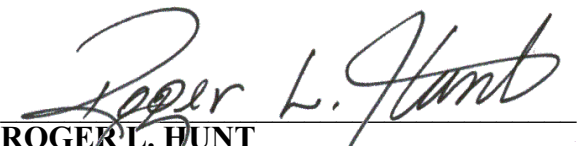
12 **CONCLUSION**

13 Accordingly, and for good cause appearing,

14 IT IS HEREBY ORDERED that Villagomes' Motion to Remand for Lack of  
15 Subject Matter Jurisdiction (#76) is DENIED.

16 IT IS FURTHER ORDERED that Accurate's Countermotion to Dismiss (#88),  
17 Surgicare's Countermotion to Dismiss (#89), LabCorp's Countermotion to Dismiss (#90) are  
18 DENIED.

19 Dated: September 20, 2010

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22 **ROGER L. HUNT**  
23 Chief United States District Judge  
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